

NCUA New Dodd-Frank Remittances and Mortgage Lending Rules Webinar

Part 2, December 18, 2013

Questions and Answers

Topics covered:

Regulation Z – Mortgage Lending Rules

Regulations X and Z – Homeownership Counseling

Regulation B – Appraisals

Regulation E – Remittance Transfers

Note: Unless otherwise specified, sections references are to Title 12 of the Code of Federal Regulations (“12 C.F.R. § _____”).

Regulation Z - Mortgage Lending Rules

Q1: Regarding closed end home equity loans - not a purchase – for General Qualified Mortgage status, are we required to use the following in the 43% DTI ratio: utilities? medical insurance? auto insurance? homeowner’s insurance? property taxes?

A: For covered transactions, including both closed end home equity loans and purchase loans, consider utilities (App. Q, Part III (2)(a)(1)), medical insurance (App. Q, Part III(2)(a)(ii)), and homeowner’s insurance and property taxes (1026.43(e)(2)(vi)(B)(1)). Appendix Q does not directly address whether to include automobile insurance in the DTI calculation. The preamble to Appendix Q states that where Appendix Q standards do not resolve how a specific kind of debt or income should be treated, a creditor may either (1) exclude the income or include the debt, or (2) rely on guidance issued by the following agencies and government-sponsored enterprises (collectively Agency or GSE guidance), provided the guidance is in accordance with Appendix Q: the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or the Rural Housing Service, the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) while operating under the conservatorship or receivership of the Federal Housing Finance Agency, or a limited-life regulatory entity succeeding the charter of either Fannie Mae or Freddie Mac. However, a creditor may not rely on Agency or GSE guidance to reach a resolution contrary to that provided by Appendix Q, even if such Agency or GSE guidance specifically addresses the particular type of debt or income but Appendix Q provides more generalized guidance.

Q2: For general ability to repay requirements, not considering general QM status, in calculating the DTI ratio, do current debt obligations include automobile insurance and medical insurance?

A: Official Interpretation 1026.43(c)(1)-1 clarifies that Regulation Z describes certain requirements for making the ability-to-repay determination but does not provide comprehensive

underwriting standards to which creditors must adhere. So long as creditors consider the factors set forth in 1026.43(c)(2) according to the requirements of 1026.43(c), they may develop their own underwriting standards and make changes to those standards over time in response to empirical information and changing economic and other conditions. Whether a particular ability-to-repay determination is reasonable and in good faith will depend not only on the underwriting standards adopted by the creditor, but on the facts and circumstances of an individual extension of credit and how a creditor's underwriting standards were applied to those facts and circumstances.

Q3: Do you have to include Homeowners' Association or Condo fees into the DTI if you do not escrow those fees?

A: For general QMs, yes, as they are housing expenses that are recurring obligations. Appendix Q (III)(2)(a)(i). For non-general QMs, refer to the answer to Question 2, above.

Q4: Does a credit union calculate DTI using gross or net income?

A: Use gross income with some adjustments for self-employed consumers. Refer to Appendix Q of Regulation Z for guidance as to general QMs. For non-general QMs, refer to the answer to Question 2, above.

Q5: Regarding closed end home equity loans - not a purchase - are we required to obtain the following information: the loan applicant's savings and checking account balances, assets, and references?

A: When you are evaluating the consumer's employment history, income, or assets to determine ATR, you must verify only what is relied on to determine ATR. Official Interpretation 1026.43(c)(3)-(4). For example, if a consumer has a full time job and a part time job and uses only the income from the full time job to pay the loan, you do not need to verify the income from the part time job. If two or more consumers apply for a mortgage, you do not have to consider both incomes, unless both incomes are required to qualify for the loan and demonstrate ATR. The same principles apply to consumer assets.

Q6: Regarding closed end home equity loans - not a purchase - does Regulation Z require us to verify the member's employment on the day of closing, even though we have received a verification of employment form with a "yes" answer to the probability of continued employment?

A: No. If the credit union is relying on employment income to determine ATR, it is required to substantiate employment at or before consummation using reasonably reliable records and other information. Once the creditor has verified employment status "before consummation," there is no requirement it do so again, e.g., on the day of closing. However, if the application or records considered at or before consummation indicates there will be a change in a consumer's employment status after consummation, the creditor must consider that information. Official Interpretation 1026.43(c)(1)-2.

Q7: Since utilities are monthly recurring obligations, does that mean they should be included in the DTI?

A: For purposes of calculating the DTI for general QMs, the credit union must include monthly housing expenses. Appendix Q, Part III(2)(a)(i). In other cases, the creditor has flexibility in setting its underwriting standards, as discussed in the answer to Question 2.

Q8: What is the maximum debt to income ratio for a QM?

A: 43% for a standard QM loan only. 1026.43(e)(2)(vi). There is no maximum for other QMs.

Q9: How is the balloon payment utilized in the debt to income ratio calculation?

A: If you are not a small creditor, you calculate on the scheduled periodic payments (including mortgage-related obligations). Do not include the balloon payment if it is outside the loan's first five years. If it is a higher-priced covered transaction and doesn't qualify as a QM, you include the balloon payment. 1026.43(c)(5)(ii)(A).

Q10: Under ATR requirements, would we be free in underwriting to continue to omit the monthly payment of loans that will be paid off in less than 10 months?

A: If payment of an obligation of less than ten months will affect the borrowers' ability to repay, it should be considered as part of the reasonable and good faith determination of the applicant's ability to repay. 1026.43(c)(1). Those debts must be considered in calculating the 43% DTI ratio cap for general QMs if it will affect the ability to repay. Appendix Q, Part III(2)(b).

Q11: Is an unsigned tax return or incomplete tax return documentation, such as only a Schedule C or E, considered valid verification of self-employment income or rental income?

A: Generally, a credit union must verify income using third-party records that provide reasonably reliable evidence of the income. The regulations provide examples of some tax records one can use. Those listed are a tax-return transcript, a copy of a filed federal or state tax return and a Form W-2. 1026.43(c)(4).

Q12: The maximum debt to income ratio for a QM is 43%. What is the maximum debt to income ratio for a non-QM mortgage?

A: There is none for non-QM mortgages. Instead, the lender must make a reasonable assessment of income and debt to determine ability to repay, per 1026.43(c) and 1026.34(a)(4) for high-cost mortgages.

Q13: As a small creditor, can we make loans with a DTI ratio greater than 43%?

A: You must consider the consumer's DTI ratio or residual income and underwrite based on a fully amortizing schedule using the maximum rate permitted during the first five years after the date of first payment and consider and verify the consumer's income and assets and debts, alimony, and child support. Other than for general qualified mortgages, the rule sets no specific threshold for DTI ratio or residual income. 1026.43(e)(2)(vi).

Q14: Please explain the importance of Appendix Q.

A: It must be followed to determine DTI under the "general" QM requirements.

Q15: Is the maximum loan to value ratio for a Qualified Mortgage 43%?

A: The 43% cap is debt-to-income ratio for general QM loans, not loan-to-value ratio.

Q16: If a credit union determines in the ability to repay analysis a member can clearly make the monthly payment but will not have assets or income to pay a balloon payment (at say month 61) may the credit union originate this type of first mortgage loan?

A: Yes, so long as it is not a higher-priced loan and the balloon payment is not due within five years from the first payment date. In that situation, the ATR analysis applies only to the regular payments during the period prior to the balloon. 1026.43(c)(5)(ii)(A)(1). For QMs, see 1026.43(e)(6) and (f).

Q17: Are AVM still allowed as an acceptable form of valuation on QM/ATR loans that are not HPML or High Cost? If so, please define acceptable reports, completed by appraiser, picture documentation, inside/outside, market conditions and the like.

A: The requirement for a formal appraisal only applies to higher-priced mortgage loans. 1026.35(a)(1), (c). The requirement doesn't change valuation procedures for other loans, which means an AVM or similar valuation can be used for non-higher-priced loans.

Q18: May value be determined by using a government valuation such as a tax bill, a city or county assessment, or a governmental Fair Market value on a tax bill?

A: The regulation prohibits the use of such documents to prove value where an appraisal is required; however, government valuations can be used to prove the date of purchase and the purchase price. 1026.35(c)(4)(vi)(A) and Appendix O(1), (2) and (7) to Regulation Z.

Q19: If a credit union assesses a property value in writing and does not use a certified outside source, does that valuation still have to be supplied?

A: If the writing assigns value to the property and is developed in connection with an application for credit, the credit union must provide a copy of the writing to the applicant. It doesn't matter if the credit union made the valuation internally or obtained it from an outside source. 1002.14(a) and Official Interpretation 1002.14(b)(3)(1).

Q20: If we just do second lien loans (Home Equity loans), but the borrower doesn't have a first lien so we end up as the first lien-holder, will we have to follow the valuation rule?

A: Yes. The valuation rule in 1026.42 applies to any transaction secured by the principal dwelling of the borrower.

Q21: Does the copy of the appraisal have to be mailed 3 days prior to consummation or does it have to be in the member's hand 3 days prior to consummation?

A: If mailing the appraisal, the credit union must mail it at least six business (6) days before consummation. Delivery is presumed to occur three days after mailing, and the credit union must deliver the appraisal at least three business days prior to consummation. 1026.35(c)(6)(ii)(A) and Official Interpretation 1026.35(c)(6)(ii).

Q22: If we make a home equity loan in conjunction with a mortgage and the originator of the first lien loan provides the appraisal, do we need to do anything related to the appraisal if we are using the same appraisal?

A: Appraisals are required for higher-priced mortgages which, by definition, are closed-end. If the HELOC is open-end, no appraisal is required. 1026.35(a)(1). CFPB has not issued

guidance on whether the appraisal done for a first-lien mortgage satisfies the requirements for a simultaneous, subordinate, closed-end home equity loan.

Q23: The disclosure states the consumer can obtain his or her own appraisal. What if the borrower obtains an appraisal that has different value from the appraisal obtained by the CU? Can the CU use the one the CU obtained?

A: The disclosure informs borrowers they can obtain their own appraisal for their own use. There is no obligation for the credit union to utilize the value from the borrowers' appraisal. 1026.35(c)(5)(i).

Q24: How can we give an appraisal within 3 days of application when it can take 3 weeks to get an appraisal?

A: You must only provide a disclosure within three days of application that tells the borrower an appraisal has been ordered and that he will be provided a copy. The appraisal itself must be provided promptly upon completion, but not less than three days prior to consummation. 1026.35(c)(5) and (6), 1002.14(a)(1) and (2).

Q25: What is the definition of a small creditor?

A: A small creditor has less than \$2B in assets and, together with affiliates, originates 500 or fewer first mortgages per year. Small creditor loans made and held in portfolio are QMs as long as the credit union has considered and verified a borrower's debt-to-income ratio (though no specific DTI limit applies). 1026.43(e)(5). Small creditors must also make more than 50% of their loans in rural or underserved area to make certain types of balloon-payment qualified mortgages. 1026.43(f)(1)(vi). Small creditors can be exempt from escrow requirements if they make at least 50% of their loans in rural or underserved counties and generally do not require escrows. 1026.35(b)(2)(iii).

Q26: If we service loans for a secondary market investor, is it considered an affiliate?

A: An affiliate controls, is controlled by, or is under common control with another entity. 12 U.S.C. 1841(k). Affiliate status is not determined by the type of activity.

Q27: We originate loans for a mortgage company when our members need a 30 year mortgage. We never put these loans on our books, we just take the applications and send them to the mortgage company. Is the mortgage company considered to be our affiliate?

A: See the response to the preceding question. In this situation, even if not an affiliate, the credit union could be acting as a loan originator and subject to the rules concerning compensation for loan originators. 1026.36.

Q28: What if you work with a mortgage company and it is the one that approves the loan, draws up the documents, etc.? Our credit union gathers some information and will fund the loan, and we are paid back within 2 - 3 weeks.

A: An entity which originates more than five loans secured by a dwelling, or more than one high-cost mortgage, is considered a "creditor" as defined in TILA. You are a creditor if the loan is initially payable to you, even if it is sold immediately. 15 U.S.C. 1602(a)(g).

Q29: Our credit union meets the requirements for being a small creditor. If we sell some of our mortgages do we lose the small creditor QM status on all our mortgages?

A: No. If the loans are sold within three years of origination to an entity which is not a small creditor, only the sold loans lose their status as small creditor QMs. 1026.43(e)(5)(ii).

Q30: Does small creditor QM status only apply to loans originated by credit unions lending in rural or underserved areas?

A: No, except for certain balloon loans. 1026.43(f)(1)(vi).

Q31: Can a small creditor make a QM balloon loan only with a fixed interest rate?

A: Yes, in order to qualify for small creditor status for qualified mortgages, per 1026.43(f)(1)(iv).

Q32: Please clarify when, to be a “small creditor,” a creditor has to meet two conditions (assets under \$2 billion and originating fewer than 500 loans per year) and when a creditor has to meet a third criteria, originating loans primarily in an underserved area?

A: For the limited purpose of determining whether loans are small creditor portfolio QMs or temporary balloon-payment QMs, the rural and underserved area prong does not apply. 1026.43(e)(5)(i)(D), (e)(6)(i)(A). All three qualifications apply to determine if the lender is a small creditor for purposes of making some QM balloon loans. 1026.43(f)(1)(vi). For purposes of being exempt from the escrow requirement, all three qualifications must be present and the credit union cannot impose escrows for its other mortgage loans. 1026.35(b)(2)(iii).

Q33: For the “small creditor” category does the term “originate” mean simply taking an application or does this refer to the number of loans funded per year?

A: For purposes of escrow requirements, the regulation refers to the small creditor requirements being present “at the time of consummation.” That presupposes the loans are funded. 1026.35(b)(2)(iii).

Q34: If a teller receives \$100 for every referral of a mortgage, is he a Loan Originator (LO) if he does not discuss qualifications or terms? He only hands out referral cards and mentions that we offer mortgage products, but defers all questions to the LOs.

A: No, assuming the teller does nothing but refer the applicant to a loan originator. See 1026.36(a)(4)(i) and (ii) of the Official Interpretations of Regulation Z.

Q35: Under the LO definition, is a credit union member services representative considered an LO if she accepts and enters a home equity application and potentially quotes a rate “as low as?” This person has no duties in processing or underwriting.

A: This depends on the level of the employee’s participation in the application process. See 1026.36(a)(1) and the Official Interpretation at 1026.36(a)(1)(i)(A)(3).

Q36: If a loan originator is paid a commission strictly based on the principal amount of the mortgage loan, can the commission exceed 10% of total annual compensation?

A: Generally, no. This issue is complicated and the answer will change depending on a number of variables. You should refer to 1026.36 and the same section of the Official Interpretations of Regulation Z for guidance. CFPB’s 2013 Loan Originator Rule, Small Entity

Compliance Guide provides additional useful discussion of these matters. It is found at http://files.consumerfinance.gov/f/201311_cfpb_updated-sticker_lo-comp-implementation-guide.pdf.

Q37: Do the NMLS ID Numbers for originators need to be on home equity lines of credit also?

A: Yes. The information is required for all loans resulting in a lien on the borrower's dwelling. 1026.36(g)(1).

Q38: If an attorney closes a loan, who is considered the originator and whose MLO# should be on the Note and Security Instrument?

A: Loan closing is not an activity which makes a person a loan originator. 1026.36(a)(1)(i). For guidance on placing originator names and numbers on instruments, see 1026.36(g).

Q39: Do the credit union name and NMLSR ID as well as the mortgage loan originator name and NMLSR ID both have to appear on the application, note, and mortgage?

A: Yes, the information for both the organization and individual must appear on the documents, per 1026.36(g)(i) and (ii).

Q40: Where do you add the loan originator name and NMLSR ID on the mortgage?

A: There is no specific place it has to be noted. It can be on the front page or on the back page where the signature lines are.

Q41: When putting MLO# and name on a note and security instrument, can the name be typed rather than signed?

A: Yes. Regulation Z does not require a signature for this. 1026.36(g).

Q42: If the employee is receiving a salary that covers her position at the credit union and she happens to do mortgages but does not receive any additional compensation for mortgages, does that qualify as "safe" compensation?

A: Assuming the activities of the employee make her a loan originator, it is not a "prohibited payment" if she receives only her regular salary for her work and that salary is the same regardless of whether she does any mortgage origination work. The salary cannot be related to any term of the mortgage loan. 1026.36(d).

Q43: If a person meets the definition of a LO under Regulation Z, does that mean that he will be required to be NMLS registered? Is that a new qualification?

A: Not necessarily. Regulation Z only requires a LO to be licensed when required by federal or state law. 1026.36(f) and the Official Interpretations of Regulation Z at 1026.36(f)(2).

Q44: If a credit union CEO/president needs to approve large HELOCs but doesn't perform any other activities, must she register as a mortgage loan originator?

A: Assuming the HELOCs are open-end loans, the loan originator rules do not apply. 1026.36(b).

Q45: The small entity guide makes a distinction between prepayment penalties and deferred closing costs the lender may require to be repaid if the loan pays off within 36 months of closing. Where can we find this discussed in the regulation or official commentary?

A: See 1026.32(b)(6)(i) and (ii) in Regulation Z and in the same section of the Official Interpretations of Regulation Z.

Q46: As a practice, we have collected the following charges if a loan is paid off before 3 years: appraisal fee; property report; flood determination; and, recording fees. Is this considered a Prepayment Penalty under the regulation?

A: Possibly. Refer to 1026.32(b)(6)(i) and (ii) in Regulation Z and the same section of the Official Interpretations of Regulation Z.

Q47: Please clarify the prepayment penalty rules under Regulation Z. Would this apply to an open-end loan? For example, if a member closes a HELOC within 18 months, can we charge a prepayment penalty?

A: Regulation Z prohibits creditors from charging a prepayment penalty for qualified mortgages after 36 months from consummation and in excess of 2% during the first two years and 1% in the third. No party can charge a prepayment penalty for higher-priced mortgage loans or if otherwise prohibited by law. Certain other restrictions apply. 1026.43(g). Federal credit unions may not charge a prepayment penalty, per NCUA Regulation 701.21(c)(6). However, the definition of prepayment penalty under 1026.32(b)(6)(ii), which applies to HELOCs, may include items not considered prepayment penalties for purposes of 701.21(c)(6).

Q48: Are QM loans for residential 1-4 family owner occupied properties only? Does it apply for 1-4 family non-owner occupied as well?

A: ATR/QM applies to almost all closed-end consumer credit transactions secured by a dwelling, including any real property attached to the dwelling. However, ATR/QM does not apply to business transactions. See 1026.2(a)(12) and 3(a). And comment 1026.3(a)-4 of Regulation Z Official Interpretations states that a loan for rental property that is not owner-occupied is deemed to be for business purposes. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied. Also, comment 1026.3(a)-5 states that a loan for owner-occupied rental property is deemed to be for business purposes if it is an *acquisition* loan and there are more than 2 housing units. ATR/QM also DOES NOT apply to HELOCs, time share plans, reverse mortgages, temporary or bridge loans with terms of 12 months or less with possible renewal, construction phase of 12 months or less with possible renewal to permanent, and vacant land.

Q49: I have a client that offers a 5/5 and a 3/3 loans. Can those be qualified mortgages?

A: They can be general qualified mortgages only if they do not have negative amortization, are not interest only, have no balloon feature, points and fees are within the acceptable limits, the term is no longer than 30 years and the credit union made the proper ability to repay analysis. 1026.43(e)(2), (3).

Q50: Do you have a list of fees which are included in “points and fees?”

A: Regulation Z does not include a list of points and fees. The provisions of 1026.4(a) and (b) and 1026.32(b)(1) provide guidance.

Q51: What makes a loan a QM loan? How do we know if we have to follow these rules?

A: 1026.43(e) contains the requirements for a loan to be considered a QM. The factors vary depending on the type of loan and the size of the creditor. Total allowable points and fees permitted varies depending on the size of the loan. 1026.43(e)(3)(i). A credit union is not required to make qualified mortgage loans, but doing so provides certain legal protections not available for non-qualified mortgages.

Q52: The definition of higher-priced mortgage for QM is 3.5 points on first lien property. Is it 1.5 points for escrowing?

A: For ATR/QM purposes, a loan is a “higher-priced covered transaction” if it creates a first lien with an APR greater than or equal to APOR + 1.5% (or APOR + 3.5% for small creditor QMs). 1026.43(b)(4). For escrow requirement purposes, a loan is a “higher-priced mortgage loan” if it is a first-lien non-jumbo loan with an APR greater than or equal to APOR + 1.5% (or APOR + 2.5% for first-lien jumbo loans). Escrow is not required for loans resulting in subordinate liens. 1026.35(a)(1) and (b)(1).

Q53: To find out if loan is high priced did the percentages change from 1.5% to 8.5% for first lien and 3.5% to 6.5% for second lien mortgages?

A: You are referring to different types of mortgages. A high-cost mortgage exists if the APR exceeds the APOR by 6.5% or 8.5%, depending on certain factors. See 1026.32(a)(1)(i). A higher-priced mortgage has a rate which exceeds the APOR by 1.5% - 3.5%, under specified circumstances. See 1026.35(a)(1).

Q54: Do the APOR thresholds apply to open end lines of credit?

A: Yes, as of 1/10/14.

Q55: Is the appraisal fee one of the fees used to determine the high cost mortgage loans?

A: Take the same approach you would use for HOEPA. If an affiliate or creditor receives any portion of the fee, the fee could be counted for determining whether the loan is a high-cost loan. Refer to 1026.32(b)(1) for guidance.

Q56: If we are doing 1st mortgage loans as 5/1 ARMS with 2/2/6 caps, and I locked-in a rate today for a member at 3.75%, what rate do I use to determine if the loan is a HOEPA loan?

A: Determination of rates for this type of disclosure is discussed in 1026.32(a)(3). For a variable rate based on an index, use the maximum margin permitted applied to the index rate as of the date the interest rate is set to calculate the APR. 1026.32(a)(3)(ii). For any other adjustable rate loan use the maximum rate permitted by the note. 1026.32(a)(3)(iii).

Q57: Are late fees on HOEPA loans restricted to 4% of the payment amount due?

A: Yes, that is correct. 1026.34(a)(8).

Q58: Is a HOEPA loan the same as a Section 32 loan?

A: Yes. 1026.32.

Q59: Does ATR/QM apply to fixed rate closed end home equity loans in a 1st or 2nd lien position?

A: Yes. Both are covered under 1026.43.

Q60: Does the prohibition of financing credit insurance premiums apply to HELOCs?

A: Yes, per 1026.36(b).

Q61: Under HCM Rule, please clarify the restrictions on paying a contractor under a home improvement contract from the proceeds.

A: A lender can only issue payment jointly to the borrower and the contractor. 1026.34(a)(i). A third-party escrow agent can make a payment directly to a contractor, but only if there is written agreement of the borrower, lender and contractor in existence at the time of the disbursement. 1026.34(a)(ii).

Q62: What is the breakdown of the fees that are limited to 3% on the GFE? Does it include the escrow account?

A: Escrows are generally not included, except for unreasonable amounts for insurance premiums. See 1026.4(c)(7) and 1024.17 for guidance.

Q63: If we broker a loan that closes in our name that is immediately assigned, and we don't actually provide the funding for the loan, does that count in our 500 loan total?

A: Yes, it does count. There is a specific caveat that states the loan must not be subject to a forward commitment (an agreement made at or prior to consummation of a loan to sell the loan after consummation) other than to a creditor that makes Small Creditor QMs. 1026.35(b)(2)(v), Official Interpretation 1026.35(b)(2)(v)-1.

Q64: ARM payment change notices must only be sent on primary residence loans. Is it ok to also send these notices to loans on second homes or investment properties?

A: The regulation requires the notice to be sent for closed-end loans secured by the borrower's principal dwelling. There is no prohibition on sending a notice for other ARMs. 1026.20(c).

Regulation B - Appraisals

Q1: Can the appraisal be considered delivered if we sent it via e-mail rather than in print?

A: Yes, you may e-mail a copy of an appraisal or other written valuation developed in connection with the application so long as you comply with the E-Sign Act. 1002.14(a)(5). The requirement in 14(a)(1) is to "provide" the copy three business days prior to consummation. Official Interpretation 14(a)(1)-4.i explains that this means "deliver" and "delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant, whichever is earlier." If an e-mail delivery (assuming compliance with E-Sign Act) is never opened, you essentially have to wait 6 business days for closing ("delivery" occurs on day 3 after sending the copy via e-mail, and then you have to wait 3 business days after delivery for closing). If the e-mail is opened (actual receipt), then you start counting the 3 business days minimum until closing from that time.

Q2: If a CU obtains an AVM that does not support the loan then obtains an appraisal, must both be provided to the consumer?

A: Yes. You must provide a copy of any appraisal or other written valuation developed in connection with an application for credit. 1002.14(a)(1). A “valuation” means any estimate of the value of a dwelling developed in connection with an application for credit. 1002.14(b)(3). A report generated by use of an automated valuation model to estimate the property’s value is an example of a valuation. Official Interpretation 1002.14(b)(3)-1.iv.

Q3: Regarding Reg B and appraisal notices: can we include waiver language on the notification of right to receive a copy, and make it standard practice to have applicants waive the right (excluding HPMLs)?

A: No. The only waiver Regulation B permits is for the timing of delivery of the appraisal. 1002.14(a)(1). You must provide a copy of the appraisal to all applicants, even those who waive the delivery timing requirement. Id.

Q4: What is the purpose of obtaining the appraisal waiver signed by the member if the lender is still required to provide a copy of the valuation?

A: An applicant may waive the timing requirement and agree to receive any copy of a valuation at or before consummation or account opening, except where otherwise prohibited by law. Without a waiver, a creditor must provide copies promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier. 1002.14(a)(1).

Q5: Does an appraisal review need to be included with the appraisal given to the borrower if it contains the appraised value?

A: You must provide a copy of any valuation developed in connection with the application. 1002.14(a)(1). An appraisal review that does not include the appraiser’s estimate of the property’s value or opinion of value is not a valuation. Official Interpretation 1002.14(b)(3)-3. In addition, an appraisal review that does not itself state a different estimate from the appraisal is not a valuation you must provide to the applicant. Id.

Q6: Does a county assessor’s “tax assessed value” report form constitute an appraisal or “valuation”?

A: No. Government agency statements of appraised value which are publicly available are not considered to be valuations. 1002.14(b), Official Interpretation 1002.14(b)(3)-3.ii.

Q7: If we deny a loan and never order an appraisal, are we required to give a copy of an internet Zillow valuation printout?

A: Regulation B requires a creditor to provide a copy of all appraisals or other written valuations developed in connection with an application for credit. 1002.14(a)(1). A “valuation” means any estimate of the value of a dwelling developed in connection with an application for credit. 1002.14(b)(3). A Zillow valuation may fall within the requirement. 1002.14(b)(3).

Regulations X and Z – Homeownership Counseling

Q1: Does a credit union have to give the counseling information even if we are not doing a HOEPA loan?

A: Yes, in certain cases. To review, the pre-loan counseling requirements are as follows:

- For HOEPA loans, creditors must receive certification that a consumer has obtained pre-loan counseling on the advisability of the HOEPA loan. 1026.34(a)(5).
- For first-time borrowers obtaining negative amortization loans, creditors must also receive certification that an applicant has obtained pre-loan counseling. 1026.36(k).
- For all federally related mortgage loans (except for certain reverse mortgages, i.e., Home Equity Conversion Mortgages or HECMS, and loans secured by a timeshare) Regulation X requires lenders to provide every loan applicant a list of HUD-approved homeownership counseling organizations in the applicant’s location from whom the applicant can receive optional counseling. 1024.20(a). Lenders can generate these lists by using the Bureau’s website, www.consumerfinance.gov/find-a-housing-counselor. A federally related mortgage loan includes loans provided by credit unions insured by NCUA. 1024.2.

Regulation E – Remittance Transfers

No questions received.

Miscellaneous

Q1: Does the complete appraisal have to be provided or can we drop the standard pages that don’t apply to the property being appraised?

A: The complete appraisal. The lender must include all attachments and exhibits which are an integrated part of any valuation, including appraisals. 1002.14(b)-2 of the Official Interpretation of Regulation B.

Q2: Will examiners allow credit unions a reasonable time after the effective dates in January to come into full compliance with all the requirements of the mortgage rules, as the CFPB has indicated? If so, how much time?

A: Refer to NCUA Letters 14-CU-01 (Supervisory Guidance on Qualified and non-Qualified Mortgages) and 14-CU-02 (Supervisory Focus of 2014), available on the NCUA website at www.ncua.gov.

Q3: Why would a small credit union want a mortgage loan to be a QM?

A: A QM complies with relevant sections of part 701 of the NCUA Regulations. In addition, QM status provides a legal safe harbor in the form of a presumption of compliance with ATR regulations.

Q4: What are the implications of doing a non-QM loan?

A: In addition to having to comply with specified requirements and restrictions, the lender does not get the benefit of the legal safe harbor.

Q5: Where we can find the APOR?

A: The FFIEC APOR tables and calculator are found at <http://www.ffiec.gov/ratespread/aportables.htm>.

Q6: If a mortgage term is more than 30 years, it does not qualify as a QM. Would allowing a 40 year term so a member can keep her home be unadvisable?

A: That is not covered by the regulations and is subject to the same considerations the credit union would otherwise make.

Q7: Are credit unions considered nonprofit organizations under section 501(c)(3)?

A: Generally, no, as they are covered by section 501(c)(14) of the Internal Revenue Code.